



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File:

Office: California Service Center

Date: FEB 10 2003

IN RE: Petitioner:
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner imports, manufactures, and wholesales furniture. It has 141 employees and a gross annual income of \$70 million. It seeks to employ the beneficiary as a production coordinator for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director denied the petition because the duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. The director further found that the petitioner had not demonstrated that the beneficiary qualifies to perform services in a specialty occupation. On appeal, counsel states, in part, that the director erroneously categorized the proffered position as a material recording, scheduling, dispatching, and distribution occupation, rather than the proper classification of production coordinator/planner or industrial designer. Counsel further states that a baccalaureate degree is required industry wide, and that the petitioner normally requires such degree for the proffered position.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

...assist in coordination between customers and production lines of production, inspection, and shipping schedules; coordinate with freight forwarder service providers to ensure timely delivery of products; assist in contract payment and account management for freight forwarder service providers.

Pursuant to 8 C.F.R. 214.2(h) (4) (iii) (A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position would normally require a baccalaureate or higher degree in business administration or a related field. Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's (DOL) Dictionary of Occupational Titles (DOT) (4th Ed., Rev. 1991). However, the Associate Commissioner does not consider the DOT a persuasive source of information regarding whether a particular job requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation.

The DOL has replaced the DOT with the Occupational Information Network (O*Net). Both the DOT and O*Net provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The DOL's Occupational Outlook Handbook (Handbook) provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to

enter into an occupation and advance within that occupation. For this reason, the Service is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the DOT.

In its Handbook, 2002-2003 edition, at pages 120-121, the DOL describes the jobs of commercial and industrial designers as follows:

Commercial and industrial designers, including designers of commercial products and equipment, develop countless manufactured products, including airplanes; cars; children's toys; computer equipment; furniture; home appliances; and medical, office, and recreational equipment. They combine artistic talent with research on product use, customer needs, marketing, materials, and production methods to create the most functional and appealing design that will be competitive with others in the marketplace. Industrial designers typically concentrate in the area of sub-specialization such as kitchen appliances, auto interiors, or plastic-molding machinery.

The record reflects that the petitioner, which imports, manufactures, and wholesales furniture, employs 141 persons and has a gross annual income of \$70 million. There is no evidence that the position offered includes complex or advanced industrial design duties such as the development of manufactured products, or that the position requires an individual with a knowledge of sophisticated design techniques normally associated with the duties of an industrial designer.

The duties that the petitioner endeavors to have the beneficiary perform are primarily the material recording, scheduling, dispatching, and distributing duties, which are similar to the duties that a cargo and freight agent would execute in a business establishment such as the petitioner's. In contrast to the description of an industrial designer, at page 409 of the Handbook, the DOL describes the positions of cargo and freight agents as follows:

Cargo and freight agents arrange for and track incoming and outgoing cargo and freight shipments in airline, train, or trucking terminals or on shipping docks. They expedite movement of shipments by determining the route that shipments are to take and preparing all necessary shipping documents. The agents take orders from customers and arrange for pickup of freight or cargo for delivery to loading platforms. They may keep records of the properties of the cargo, such as the amount, type, weight, and dimensions...

Cargo and freight agents arrange cargo according to its destination. They also determine the shipping rates and other charges that can sometimes apply to the freight. For imported or exported freight they verify that the proper customs paperwork is in order. They often track shipments using electronic data, such as bar codes, and answer customer inquiries on the status of their shipments.

The types of duties the petitioner ascribes to the beneficiary fall within the scope of a cargo and freight agent position rather than an industrial designer position. For example, the petitioner states that the beneficiary will "assist in coordination between customers and production lines of production, inspection, and shipping schedules, coordinate with freight forwarder service providers to ensure timely delivery of products," and "assist in contract payment and account management for freight forwarder service providers." Such duties are not normally associated with an industrial designer. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, although the petitioner's past hiring practices indicate that it normally requires a baccalaureate degree in business administration or an equivalent thereof for the proffered position, the petitioner's reasoning is problematic when viewed in light of the statutory definition of specialty occupation. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. As with employment agencies as petitioners, the Service must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Cf. Defensor v. Meissner, 201 F.3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if the Service was limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-

¹ The court in Defensor v. Meissner observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." Supra at 387.

specialty occupation, so long as the employer required all such employees to have bachelor's degrees. See id. at 388.

In this case, although the petitioner claimed to have hired only individuals with a bachelor's degree in business administration or an equivalent thereof for its production coordinator position, the position, nevertheless, does not meet the statutory definition of specialty occupation. The position, itself, does not require the theoretical and practical application of a body of highly specialized knowledge. Therefore, even though the petitioner has required a bachelor's degree in the past, the position still does not require a bachelor's degree in a specific specialty.

Third, although the record contains numerous job postings, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The job fits the description of a cargo and freight agent, rather than an industrial designer. According to the DOL at page 409 of Handbook, the usual requirement for a cargo and freight agent is a high school diploma or its equivalent. Employers, however, prefer to hire those familiar with computers and other electronic office and business equipment. Those who have taken business courses or have previous business, dispatching, or specific job-related experience may be preferred. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.